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SUPREME COURT. U.S. No. 184.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

THE GENERAL PROTECTIVE COMMITTEE FOR THE HOLDERS OF OPTION WARRANTS OF THE UNITED CORPORATION,

Petitioner,

v.

THE SECURITIES AND EXCHANGE COMMISSION, THE UNITED CORPORATION, EDWARD R. DOWNING, RANDOLPH PHILLIPS, and 22,081 STOCKHOLDERS OF THE UNITED CORPORATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

ANSWER OF RESPONDENTS DOWNING AND PHILLIPS IN OPPOSITION TO MOTION FOR TAXATION OF COSTS.

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March 5, 1954.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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Edward R. Downing and Randolph Phillips oppose this motion as unfair and inequitable to said Respondents on the following grounds:

1. Respondents did not oppose the granting of the petition for writ of certiorari.

2. Respondents The United Corporation and the Securities and Exchange Commission opposed the granting of said writ.

3. Respondents only appeared and assumed the position they argued herein because in its order of October 12, 1953, granting the petition, this Court broadened the first

question presented by the petition and rephrased it so as to procure argument on a more fundamental issue. The very phrasing of this Court's question implied that in its view either the District Court or the Court of Appeals had jurisdiction of the single S. E. C. order, and that a split review was not permissible.

4. The losing parties therefore with respect to the granting of the petition were The United Corporation and the S. E. C.

5. Petitioner's costs herein are fully reimbursable by The United Corporation pursuant to Section 11(e) of the Public Utility Holding Company Act. *In Re Engineers Public Service Co.*, 116 F. Supp. 930 (1953), and cases cited therein; *North American Light & Power Co.*, 202 F. 2d 638, cert. den. 346 U. S. 816 *sub nom. S. E. C.* v. *Masterson.*

6. The petitioner moved (R. 242) to intervene in the Court of Appeals, and for that Court to assume jurisdiction over petitioner's case. Both The United Corporation and the S. E. C. opposed petitioner's motion (R. 247, 254), while the record is bare of any support or opposition by Respondents Downing and Phillips, who were neutral on the motion.

7. Petitioner herein expressly represented in the Court below:

> "The assumption of jurisdiction by this Court of the entire order of the Commission will expedite an early final determination of the case since this Court has evidenced its intention of expediting the matter, and since this Court has jurisdiction under Section 24(a) of the Act to settle the matter finally without sending it back to the Commission for further proceedings" (R. 258-9).

8. Had petitioner not moved to intervene the Court of Appeals would not have assumed jurisdiction over petitioner's case and there would have been no need for it to have filed its petition in this Court. It was petitioner's own argument and misunderstanding of the legal position that persuaded the Court of Appeals to review the option warrant holders' case and assume jurisdiction thereof. Respondents should not be penalized because the petitioner created a legal controversy on a misunderstanding of the law, obtained the jurisdiction sought by it, and then had this Court reverse that jurisdiction because the lower Court decided against it on the merits.

9. In *S. E. C.* v. *Central-Illinois Corp.*, 338 U. S. 96, the closest analogous case to this, the Court taxed costs, we are informed, against the corporation.

10. Should Respondents be taxed with the costs, this would be reimbursable against United Corporation under 116 F. Supp. 930. Therefore this Court should tax the costs now directly against The United Corporation, and not indirectly.

The motion should be denied, or in the alternative granted against The United Corporation.

Respectfully submitted,

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